

RORY VAUGHN KEETON,
Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner
of Social Security,

Defendant.

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) No. CV-09-3103-CI
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) ORDER GRANTING PLAINTIFF'S
) MOTION FOR AN AWARD OF EAJA
) ATTORNEY FEES
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On January 10, 2011, the Court adopted Magistrate Judge Imbrogno's Report and Recommendation, and granted the parties' stipulated motion for remand. (ECF No. 28, 29, 30.) The matter was remanded to the Commissioner for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). (ECF No. 30.) Judgment was entered for Plaintiff. (ECF No. 31.) Plaintiff filed an Amended Motion for Attorney Fees pursuant to 28 U.S.C. § 2412 on January 27, 2011. (ECF No. 33.)

1 The EAJA provides for an award of attorney fees to private
2 litigants who both prevail in civil actions (other than tort) against
3 the United States and timely file a petition for fees. 28 U.S.C. §
4 2412(d)(2)(A). Under the EAJA, the court must award attorney fees to
5 the prevailing party unless it finds the government's position was
6 "substantially justified or that special circumstances make such an
7 award unjust." *Id.* § 2412(d)(1)(A).

8 Plaintiff, as the prevailing party, seeks EAJA attorney fees of
9 **\$5,288.23**, expenses in the amount of **\$41.18** pursuant to § 2412(d), and
10 costs in the amount of **\$374.50** pursuant to § 1920. The requested
11 award amount is based on 1) Mr. Halpern's attorney fee rate of \$172.24
12 per hour for 2.6 hours worked in 2009 and an attorney fee rate of
13 \$175.06 per hour for 8.5 hours worked in 2010, and 2) attorney
14 Victoria Chhagan's attorney fee rate of \$175.06 for 19.15 hours worked
15 in 2010. (ECF No. 33.) Plaintiff's request is supported by counsels'
16 itemized billing statements. (*Id.*, Attach. 2 & 3.) However, the file
17 does not reflect that Ms. Chhagen filed a Notice of Appearance in this
18 matter.

19 In his response to Plaintiff's Amended Motion, Defendant did not
20 object to motion or rates and amounts requested. (ECF No. 34 at 2.)
21 However, citing *Astrue v. Ratliff*, 130 S. Ct. 2521 (2010), Defendant
22 asserted the award of EAJA fees must be paid directly to Plaintiff and
23 not Plaintiff's attorneys. (ECF No. 34 at 2-3.) In *Ratliff*, the
24 Supreme Court held, "a § 2412(d) fees award is payable to the litigant
25 and is therefore subject to a Government offset to satisfy a pre-
26 existing debt that a litigant owes the United States." *Ratliff*, 130
27 S. Ct. at 2524 & 2529. Unless the agency receives verification that

1 Plaintiff does not have outstanding federal debts that would qualify
2 for offset of an EAJA award, and Plaintiff has made a valid assignment
3 of the EAJA award, direct payment of an EAJA award to Plaintiff's
4 counsel is not authorized. *Id.* at 2529.

5 Here, the record includes Plaintiff's declaration authorizing
6 payment of EAJA fees directly to his attorney. (ECF No. 23.)
7 Defendant asserted if a federal debt subject to the United States
8 Treasury Offset Program is owing, any EAJA award remaining after the
9 government offset should be payable directly to Plaintiff. (ECF No.
10 34 at 3.) Defendant also proposed that, upon verification by the
11 Commissioner that Plaintiff has no government debt which qualifies for
12 offset against the EAJA award, the EAJA award be paid directly to
13 Plaintiff's attorney. If no offset is due, Defendant agreed to send
14 the EAJA award, payable to Mr. Halpern, directly to Mr. Halpern at
15 Halpern and Oliver, PLLC, 1800 Cooper Point Road SW, Building #19,
16 Olympia, Washington 98502. *Id.* Plaintiff did not object to this
17 proposal.

18 On March 11, 2011, Magistrate Judge Imbrogno entered a Report and
19 Recommendation recommending the Court grant Plaintiff's Amended Motion
20 for EAJA fees and expenses. (ECF No. 35.) On March 25, 2011,
21 Defendant timely filed Objections to the Magistrate Judge's
22 recommendation that a portion of the attorney fee award be payable
23 directly to Ms. Chhagen. Defendant argues that "although Ms. Chhagan
24 may have assisted Mr. Halpern with Plaintiff's representation, only
25 Mr. Halpern represents Plaintiff." (ECF No. 37 at 2.) Defendant
26 correctly argues if an EAJA award is granted, it should be payable
27 only to Mr. Halpern. *Id.*

1 Defendant also correctly argues that under *Ratliff*, all fees,
2 expenses and costs payable to Plaintiff by the United States are
3 subject to Treasury Offset Program. *Ratliff*, 130 S. Ct. at 2524
4 (quoting 31 U.S.C. § 3701(a)(1)). Therefore, expenses and costs
5 cannot be paid directly to Plaintiff's counsel as recommended in the
6 Report and Recommendation. Plaintiff has not contested Defendant's
7 Objections.

8 For these reasons, the Court **DECLINES** to adopt the Magistrate
9 Judge's Report and Recommendation (ECF No. 35) to the extent it 1)
10 recommends payment directly to Ms. Chhagen, and 2) is inconsistent
11 with the holdings in *Ratliff*. Accordingly, **IT IS ORDERED:**

12 1. Plaintiff's Amended Motion for Attorney Fees, Costs and Expenses
13 pursuant to 28 U.S.C. § 2412 (**ECF No. 33**) is **GRANTED IN PART**.

14 2. The U.S. Treasury shall promptly determine whether there is an
15 outstanding debt subject to offset pursuant to the Treasury
16 Offset Program. No later than May 9, 2011, Defendant shall file
17 a notice indicating the U.S. Treasury's determination.

18 3. If the U.S. Treasury determines there is an outstanding debt
19 subject to offset pursuant to the Treasury Offset Program, the
20 Commissioner is directed to pay an EAJA award in the amount of
21 **\$5,288.23**, expenses in the amount of **\$41.18**, and costs in the
22 amount of **\$374.50**, directly to Plaintiff, subject to any offset
23 under the United States Treasury Offset Program. Plaintiff's
24 award check shall be delivered to Plaintiff's counsel, Elie
25 Halpern, at Mr. Halpern's office: Halpern & Oliver, PLLC, 1800
26 Cooper Point Road SW, Bldg. 19, Olympia, WA 98502.

27 4. If the United States Treasury determines there is no outstanding
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1 debt subject to offset pursuant to the Treasury Offset Program,
2 the Commissioner shall pay EAJA attorney fees in the amount of
3 **\$5,288.23**, expenses in the amount of **\$41.18**, and costs in the
4 amount of **\$374.50**, directly to attorney Elie Halpern at the
5 address above.

6 IT IS SO ORDERED. The Clerk of the Court is directed to file
7 this Order and provide a copy to counsel for Plaintiff and Defendant
8 and close the file.

9 **DATED** this 18th day of April 2011.

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12 S/ Edward F. Shea
13 EDWARD F. SHEA
14 UNITED STATES DISTRICT JUDGE

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